

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

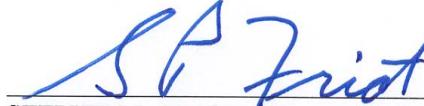
## **ORDER**

Plaintiff Dustin D. Gifford, a state prisoner appearing *pro se* and *in forma pauperis*, brings this civil rights action pursuant to 42 U.S.C. § 1983. The Supplemental Report and Recommendation of Magistrate Judge Gary M. Purcell is before the court. Doc. no. 25 (the Supplemental Report). The Supplemental Report recommends that defendants' motion to dismiss be granted, doc. no. 23, and that this action be dismissed without prejudice under Rule 12(b)(6), Fed. R. Civ. P., and under 28 U.S.C. §1915(e)(2)(B), for failure to state a claim upon which relief may be granted. The Supplemental Report further recommends that this dismissal count as one "prior occasion" or "strike" pursuant to 28 U.S.C. § 1915(g). The Supplemental Report further advised plaintiff of his right to object to the Supplemental Report by September 29, 2014, and advised that failure to make timely objection waives the right to appellate review of the recommended ruling. No objection or request for an extension of time has been filed.

Having conducted its own review and with there being no objection, the Supplemental Report and Recommendation of Magistrate Judge Purcell is **ACCEPTED, ADOPTED** and **AFFIRMED**. Defendants' motion to dismiss is

**GRANTED.** Doc. no. 23. This action is **DISMISSED** without prejudice under Rule 12(b)(6), Fed. R. Civ. P., and under 28 U.S.C. §1915(e)(2)(B), for failure to state a claim upon which relief may be granted. This dismissal counts as one “prior occasion” or “strike” pursuant to 28 U.S.C. § 1915(g).

Dated this 15<sup>th</sup> day of October, 2014.



---

STEPHEN P. FRIOT  
UNITED STATES DISTRICT JUDGE

14-0201p004.wpd